

Office of Property Disposal

Title X: The Residential Lead-Based Paint Hazard Act New Regulations, Effective September 15, 2000



What is Title X?

In 1992, Congress enacted Title X, the Residential Lead-Based Paint Hazard Reduction Act to provide a national framework for addressing lead-based paint hazards at Federal residential property. Title X, commonly known as the Residential Lead-Based Paint Hazard Reduction Act, amended the Lead-Based Paint Poisoning Prevention Act of 1971 and introduced new requirements for the reduction of hazards associated with lead-based paint.

Title X required HUD to promulgate regulations addressing lead-based paint (LBP) inspection and abatement activities, and amended Section 403 of the Toxic Substances Control Act (TSCA) requiring EPA to identify lead-based paint hazard levels for paint, dust, and soil. The HUD regulations were promulgated in 1999 and go into effect on September 15, 2000 (See the reference list on page 5 for the Website with regulation text).

To what types of property do the regulations apply?

The regulations apply to specially defined residential property called **target housing**. Target housing is defined as any housing constructed prior to 1978, except housing for the elderly and persons with disabilities or zero bedroom dwellings (unless a child younger than six years old resides or is expected to reside in the housing). Subpart C specifically applies to Federally owned housing other than HUD properties.

What property is exempt from the regulations?

- ◆ Non-residential buildings
- ◆ Zero bedroom dwellings*
- ◆ Housing for the elderly and disabled*
- ◆ Target housing that is to be demolished
- ◆ Residential property constructed after 1978
- ◆ Residential property in which all LBP has been identified, removed or clearance has been achieved before September 2000

*Zero bedroom dwellings and housing for the elderly and disabled are exempt unless occupied by a child younger than six years old.

What do the regulations require?

- ◆ For pre-1960 target housing, the regulations require both **inspection and abatement** of lead-based paint hazards.
- ◆ For 1960-78 target housing, the regulations require an **inspection and risk assessment** but not abatement of lead-based paint hazards.

See Table 2: *Summary of Lead-Based Paint Requirements* on page 4 for further clarification.

What is a lead-based paint “hazard”?

A lead-based paint “hazard” is any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects, as established by the appropriate Federal agency. Peeling, chipping, chalking or cracking lead-based paint is a hazard that needs immediate attention.

For 1960-78 residential property, when must inspection and risk assessment be performed?

The lead-based paint inspection and risk assessment must be conducted by the holding agency before the closing of the sale.

What is abatement?

Abatement encompasses any set of measures designed to permanently eliminate lead-based paint hazards including:

(1) removal of lead-based paint and lead-contaminated dust, permanent enclosure or encapsulation of lead-based paint, replacement of lead-painted components or fixtures, and/or removal or covering of lead-contaminated soil, and (2) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

When must abatement be performed?

Abatement must be initiated within 12 months of the risk assessment being completed. If abatement is not started within this period and the property has not yet been sold, the holding agency would be responsible for updating the risk assessment.

Can abatement be performed after sale?

Yes, abatement of lead-based paint hazards may be completed by the purchaser and abatement may be made a condition of sale, but the holding agency is responsible for assuring that the abatement is carried out by the purchaser before occupancy of the property. It is recommended that the disposal agency require in the Contract for Sale, Offer to Purchase, or Invitation for Bid (IFB) that the purchaser send a copy of the certified abatement report to the holding and disposal agencies once abatement is completed.

What are interim controls and how are they used?

Interim controls are measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, and includes specialized cleaning, repairs, maintenance, painting, temporary containment, and ongoing monitoring of lead-based paint hazards or potential hazards. HUD's 1995 guidelines recommended the use of interim controls for potential hazard areas (400-2000ppm), but the new Title X regulations do not currently provide for their use, except as an alternative to abatement for hazards.

Where can a Realty Specialist or Holding Agency find qualified lead service providers?

The National Lead Service Providers' Listing System, The Lead Listing, has been developed to help consumers locate qualified lead service providers (lead inspectors, risk assessors, and abatement contractors), renovators trained in lead-safe practices (lead-trained renovators), and recognized lead analysis laboratories in a timely fashion. Please be aware that the holding agency is responsible for complying with the Title X requirements.

The Lead Listing: <http://www.leadlisting.org/>

Is notification/disclosure still required?

Yes, the regulations promulgated jointly by HUD and EPA pursuant to Section 1018 of Title X (March 1996) require disclosure of known LBP or LBP hazards by persons selling or leasing target housing. The disclosure requirements found below are currently in effect and will not be amended by the new regulations, effective September 15, 2000.

If the property is non-residential but the highest and best use is residential, do the regulations apply?

No, according to HUD guidance (September 21, 2000), the LBP regulations do not apply to pre-1978 property that is not housing at the time of sale. The Federal responsibility to inspect and abate applies only to existing pre-1978 target housing, not property that will be converted to or used as housing after sale. HUD does recommend that the Federal agency inform the buyer that LBP hazards may be present if it is known or suspected that the structure will be used as housing.

If a property is sold on September 14th but the closing does not occur until October 1st, do the regulations apply?

No, the regulations only apply to a property with a sale date on or after September 15, 2000.

Table 1: Disclosure Requirements

<ul style="list-style-type: none"> • Disclose the presence of known lead-based paint and/or lead-based paint hazards to purchaser • Disclose additional information available concerning the known lead-based paint and/or lead-based paint hazards (e.g., location of hazards, basis for such a determination, and condition of the painted surfaces) to purchaser • Provide any available records or reports pertaining to lead-based paint and/or lead-based paint hazards to purchaser • Provide to purchaser an approved lead hazard information pamphlet • Allow 10 days for purchaser to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards 	<p>The Sales Contract, IFB, Offer to Purchase or lease must include an attachment containing the following elements:</p> <ul style="list-style-type: none"> • "Lead Warning Statement" • Statement disclosing the presence of known lead-based paint and/or lead-based paint hazards • Statement disclosing additional information available concerning the known lead-based paint and/or lead-based paint hazards (e.g., location of hazards, basis for such a determination, and condition of the painted surfaces) to purchaser • List of records or reports that have been provided to purchaser • Statement by purchaser affirming receipt of seller's disclosure statements, records and reports, and lead hazard information pamphlet • Statement by purchaser that an opportunity to conduct the risk assessment or inspection has been received • Signatures of seller and purchaser certifying the accuracy of their statements
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**Table 2: Summary of Lead-Based Paint Requirements
(24 CFR Part 35)¹**

	Paint Inspection	Risk Assessment	Abatement of Lead-Based Paint Hazards	Disclosure
Pre-1960 Target Housing	YES Prior to Sale/ Transfer	YES Prior to Sale/ Transfer	YES ^{2,3} Must be performed within 12 months of risk assessment	YES
1960-1978 Target Housing	YES Prior to Sale/ Transfer	YES Prior to Sale/ Transfer	NO	YES
Target Housing to be demolished and the site redeveloped for residential use ⁴	NO	NO	NO	NO
Non-Residential Buildings	NO	NO	NO	NO

¹ The regulations, effective September 15, 2000, only apply to specially defined residential property (i.e., target housing).

² Where abatement of lead-based paint hazards is not completed before the closing of the sale, the holding agency shall be responsible for assuring that the abatement is carried out by the purchaser before occupancy of the property.

³ In the case of a purchaser who will not be an owner/occupant, the agency could make abatement a condition of sale with sufficient funds escrowed.

⁴ Target housing to be demolished and redeveloped for residential use is exempt from the requirements so long as the housing remains unoccupied until demolition. Please be aware, other state and Federal environmental laws may apply.

Where can I find out more information?

Regulations: Final Rules

HUD's Title X

September 15, 1999 Federal Register Notice:
Final Rule for the Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance

http://www.access.gpo.gov/su_docs/fedreg/a990915c.html

HUD/EPA Disclosure Regulations

March 6, 1996 Federal Register Notice:
Final Rule—Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards and Housing; Final Rule

<http://www.epa.gov/opptintr/lead/fr06mr96.pdf>

EPA's Work Practice Standard

August 6, 1999 Federal Register Notice:
Amendment to Final Rule: Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Certification Requirement and Work Practice Standards for Individuals and Firms

<http://www.epa.gov/lead/fr8699.pdf>

Proposed Rule Making

EPA Toxic Substance and Control Act (TSCA) 403

June 3, 1998 Federal Register Notice:
EPA Proposed Rulemaking for Identification of Dangerous Levels of Lead

<http://www.epa.gov/lead/403nprm.pdf>

U.S. EPA Websites

EPA Office of Pollution and Toxic (OPPT)
Lead Programs

<http://www.epa.gov/lead/>

EPA OPPT Residential Lead Hazard
Standards—TSCA Section 403

<http://www.epa.gov/lead/leadhaz.htm>

EPA OPPT Training and Certification Program
for Lead-Based Paint Activities in Target
Housing and Child Occupied Facilities-Section
402/404

<http://www.epa.gov/lead/leadcert.htm>

EPA Lead Hazard Information Pamphlet
“Protect Your Family From Lead in Your
Home” and Sample Disclosure Formats

<http://www.hud.gov/lea/leadhelp.html>



HUD Websites

HUD Office of Lead Hazard Control

<http://www.hud.gov/lea/leahome.html>

HUD Reference Library for Title X

<http://www.hud.gov/lea/leadwnlo.html>

DoD (For BRAC Property Only)

Lead-Based Paint Guidelines for Disposal of
Department of Defense Residential Real
Property—A Field Guide

<http://www.dtic.mil/envirodod/brac/publish.html>

Others

NSCLnet Search: Lead Poisoning Prevention-
State Contacts Directory

<http://www.ncsl.org/programs/esnr/pbDir.htm>

National Lead Information Center

1-800-424-LEAD



Glossary

Abatement: Any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such measures may include (1) removal of lead-based paint and lead-contaminated dust, permanent enclosure or encapsulation of lead-based paint, replacement of lead-painted components or fixtures, and/or removal or covering of lead-contaminated soil and (2) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

Disclosure: Notification of and information about known lead-based-paint and/or lead-based paint hazards, and any available records or reports pertaining to the lead-based paint and/or lead-based paint hazards to the purchaser by the seller regarding most housing built before 1978. The disclosure requirements stated below are currently in effect and will not be amended by the new regulations, effective September 15, 2000. However, the requirements will be moved from Subpart H to Subpart A of the Code of Federal Regulations, Title 24, Part 35 when the new regulations become effective.

Evaluation: A risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

Federally owned housing: Residential dwellings owned or managed by a Federal agency, or for which a Federal agency is a trustee or conservator. Properties seized by Federal law enforcement agencies and held for less than 270 days are exempt.

Interim controls: A set of measures designed to temporarily reduce human exposure or the likelihood of exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential soil lead hazards, and the establishment and operation of management and resident education programs.

Lead-based paint: Paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² of lead or 0.5 percent lead by weight.

Lead-based paint hazard: Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects, as established by the appropriate Federal agency.

Paint Inspection: A surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Risk assessment: An on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including (1) information gathered regarding the age and history of the housing and occupancy by children under age 6; (2) visual inspection; (3) limited wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate; and (5) provision of a report explaining the results of the investigation.

Target housing: Housing constructed before 1978, except housing for the elderly or persons with disabilities (unless a child younger than six years old resides or is expected to reside in the housing) or zero bedroom dwellings. Child care facilities are not target housing unless located at residence that itself is target housing.